

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE 461 7 TH AVE MARKET, INC.

Debtor.

18-22671-RDD

Chapter 11

461 7TH AVE MARKET, INC., and
YOUNG IL PARK,

Plaintiffs,

vs.

DELSHAH 461 7TH AVENUE, LLC,
DELSHAH CAPITAL, and MICHAEL
SHAH,

Defendants.

Adv. Pro. No. 18-08265-RDD

**Plaintiff Young Il Park and Debtor 461
7th Avenue Market, Inc.'s Notice of
Appeal from the Order Filed 8-27-2020
Partially Granting Delshah Capital's
Motion to compel the Trustee to Reject
the Lease and Surrender the Premises to
Delshah Capital**

SIR/MADAM:

PLEASE TAKE NOTICE that both Plaintiff Young Il Park and Debtor 461 7th Avenue Market, Inc., appeals from the Order filed August 27, 2020, partially granting Delshah Capital's motion to compel the Trustee to reject the lease and surrender the premises to Delshah Capital to the United States District Court for the Southern District of New York. The Order is annexed hereto.

Dated: September 8, 2020

KIMM LAW FIRM
Special Counsel for Debtor

/s/ Michael Kimm

Michael S. Kimm, Esq.

To: Clerk, U.S. Bankruptcy Court

William Savino, Esq., Counsel for Delshah Capital

Holly R. Holecek, Esq., Counsel for Trustee Marianne O' Toole

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 7

461 7TH AVENUE MARKET, INC. d/b/a
DALI MARKET,

Case No.: 18-22671 (RDD)

Debtor.

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**ORDER (I) CONFIRMING ABANDONMENT OF PREMISES AND LEASE,
(II) REJECTING LEASE, (III) DIRECTING SURRENDER OF PREMISES,
AND (IV) GRANTING RELATED RELIEF**

Upon the notice of proposed abandonment [ECF No. 198] by Marianne T. O'Toole, as Chapter 7 trustee (the "Trustee") of 461 7th Avenue Market, Inc. d/b/a Dali Market, the debtor herein (the "Debtor"), of the right, title and interest of the Debtor's estate in and to the leased premises located at 461 7th Avenue, New York, New York 10001 (the "Premises") and the related lease for the Premises dated July 2003, as assigned under an Assignment and Assumption of Lease dated December 5, 2004 and an Assignment and Assumption of Lease dated January 5, 2011 ("Lease"); and upon the objection of Delshah 461 Seventh Avenue LLC (the "Landlord") to the Trustee's proposed abandonment of the Premises and Lease [ECF No. 204] (the "Objection"); and upon the Trustee's reply to the Objection [ECF No. 204]; and upon the Landlord's motion to compel the rejection of the Lease, surrender of the Premises, and payment of rent [ECF No. 204] (the "Motion to Compel"); and upon the Trustee's opposition to the Motion to Compel [ECF No. 204]; and upon the Landlord's reply to the Trustee's opposition to the Motion to Compel [ECF No. 218] and all related pleadings and proceedings herein; and there being due and sufficient notice of the Trustee's notice of proposed abandonment and of the Motion to Compel, and no additional notice being required; and upon the record of the hearing held by the Court on August 27, 2020 on the notice of proposed abandonment and the Objection thereto and on the Motion to Compel (the

“Hearing”), the transcript of which is incorporated by reference herein; and at the Hearing the Landlord having waived any claim for post-conversion rent and other charges against the Debtor’s estate (excluding any payments previously made to the Landlord for July 2020 rent) under the Lease upon the terms of this Order; and, after due deliberation, the Court having determined that each of (a) the rejection of the Lease and (b) the abandonment of the Premises and Lease on the terms of this Order clearly are a proper exercise of the Trustee’s business judgment and, in each case, in the best interests of the Debtor’s estate and creditors; and the Court having further determined, including for the reasons stated by the Court at the Hearing, that the Trustee’s surrender of possession of the Premises to the Landlord as required hereby upon the rejection of the Lease is consistent with the Court’s Order converting this case to a case under Chapter 7 of the Bankruptcy Code and warranted under the applicable facts and law; and good and sufficient cause appearing, it is hereby

ORDERED that the Motion to Compel is granted insofar as the Lease is deemed rejected under 11 U.S.C. § 365(a) as of August 27, 2020; and it is further

ORDERED that the Motion is granted insofar as the Trustee is directed to immediately surrender possession of the Premises to the Landlord; and it is further

ORDERED that the Motion to Compel is otherwise denied; and it is further

ORDERED that the Landlord has waived and shall not have any claims against the Debtor’s estate under 11 U.S.C. § 365(d)(3) for post-conversion administrative rent, additional rent or other consideration under the Lease (excluding any payments previously made to Landlord for July 2020 rent); and it is further

ORDERED that the Landlord’s Objection is overruled; and it is further

ORDERED that, in accordance with 11 U.S.C. § 554(a), the Premises and Lease are

deemed abandoned as of August 27, 2020, with such abandonment to be effective immediately after the surrender of possession of the Premises to the Landlord as directed by this Order; and it is further

ORDERED that this Court shall retain jurisdiction over any and all issues arising from or related to the interpretation or implementation of this Order.

Dated: August 27, 2020
White Plains, New York

/s/Robert D. Drain _____

Honorable Robert D. Drain
United States Bankruptcy Judge